

AMENDED IN ASSEMBLY APRIL 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 680

Introduced by Assembly Member Lempert

February 23, 1999

An act to amend Sections 8670.3, 8670.5, 8670.7, 8670.12, 8670.25, 8670.25.5, 8670.31, 8670.64, 8670.66, 8670.67, and 8670.70 of, and to add Sections 8670.2.5, 8670.67.3, and 8670.75 to the Government Code, *and to amend Sections 8750 and 8754 of the Public Resources Code*, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 680, as amended, Lempert. Oil spill prevention: nonmarine waters.

(1) The existing Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, among other things, governs the prevention of oil spills into marine waters, as defined.

This bill would define the term “waters of the state” for purposes of the act, and would, ~~for~~ *make various other changes to conform to this definition. For* purposes of spills or discharges of oil into nonmarine waters of the state, *the bill would* limit the definition of the term “person” under the act.

(2) Under the act, it is a crime to, among other things, knowingly engage in or cause the spill or discharge of at least one barrel (42 gallons) of oil into marine waters, and the intentional or negligent spill or discharge of that quantity of oil into marine waters is also subject to specified civil penalties, as prescribed.

This bill would make such a spill or discharge of oil into nonmarine waters of the state on or after January 1, 2000, subject to those criminal and civil penalties. The bill would therefore impose a state-mandated local program by creating a new crime.

The bill would require specified factors to be considered in determining the amount of criminal or civil penalties to be imposed for such a spill or discharge. The bill would require all penalties collected that are derived from those spills or discharges to be deposited in the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund. The bill would make conforming changes and prescribe related matters.

(3) *Under existing law, the administrator for oil spill response may prohibit an owner or operator of a marine terminal from delivering or accepting oil to or from any tanker or barge if the administrator finds that the owner or operator has violated certain provisions of the act, as prescribed.*

This bill would transfer the authority to take that action to the executive officer of the State Lands Commission.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that this
2 act does not apply to spills or discharges of oil or
3 petroleum products by agricultural operations into
4 waters of the state, other than marine waters.

5 SEC. 2. Section 8670.2.5 is added to the Government
6 Code, to read:

7 8670.2.5. The Legislature further finds and declares as
8 follows:



1 (a) Each year, billions of gallons of crude oil and
2 petroleum productions are stored or transported by
3 pipeline or other means across and adjacent to the waters
4 of the state.

5 (b) Recent discharges in California and other parts of
6 the nation have shown that the discharge of oil can be a
7 significant threat to the environment.

8 (c) Although spill prevention programs may reduce
9 the risk of a significant discharge of petroleum into the
10 nonmarine waters of the state, fines and penalties
11 associated with those spills or discharges are insufficient
12 when compared to similar spills or discharges into the
13 marine waters of the state.

14 (d) Penalties resulting from spills or discharges into
15 the nonmarine waters of the state occurring from
16 pipelines under the jurisdiction of the Office of the State
17 Fire Marshal or the United States Department of
18 Transportation; from oil production wells, whether
19 active, inactive, or abandoned, and the gathering lines,
20 pipelines, and flow lines associated therewith, under the
21 jurisdiction of the Department of Conservation; from
22 refineries; and from spills or discharges resulting from the
23 transport of oil or petroleum products by rail or vessel
24 should be comparable to those imposed for the spill or
25 discharge of oil or petroleum products into the marine
26 waters of the state.

27 SEC. 3. Section 8670.3 of the Government Code is
28 amended to read:

29 8670.3. Unless the context requires otherwise, the
30 following definitions shall govern the construction of this
31 chapter:

32 (a) "Administrator" means the administrator for oil
33 spill response appointed by the Governor pursuant to
34 Section 8670.4.

35 (b) "Barge" means any vessel that carries oil in
36 commercial quantities as cargo but is not equipped with
37 a means of self-propulsion.

38 (c) (1) "Best achievable protection" means that the
39 highest level of protection that can be achieved through
40 both the use of the best achievable technology and those

1 manpower levels, training procedures, and operational
2 methods that provide the greatest degree of protection
3 achievable. The administrator's determination of best
4 achievable protection shall be guided by the critical need
5 to protect valuable coastal resources and marine waters,
6 while also considering (A) the protection provided by the
7 measures, (B) the technological achievability of the
8 measures, and (C) the cost of the measures.

9 (2) It is not the intent of the Legislature that the
10 administrator use a cost-benefit or cost-effectiveness
11 analysis or any particular method of analysis in
12 determining which measures to require. Instead, it is the
13 intent of the Legislature that the administrator give
14 reasonable consideration to the protection provided by
15 the measures, the technological achievability of the
16 measures, and the cost of the measures when establishing
17 the requirements to provide the best achievable
18 protection for coastal and marine resources.

19 (d) "Best achievable technology" means that
20 technology that provides the greatest degree of
21 protection, taking into consideration (1) processes that
22 are being developed, or could feasibly be developed
23 anywhere in the world, given overall reasonable
24 expenditures on research and development, and (2)
25 processes that are currently in use anywhere in the world.
26 In determining what is best achievable technology, the
27 administrator shall consider the effectiveness and
28 engineering feasibility of the technology.

29 (e) "Local government" means any chartered or
30 general law city, chartered or general law county, or any
31 city and county.

32 (f) "Marine facility" means any facility of any kind,
33 other than a vessel, that is or was used for the purposes of
34 exploring for, drilling for, producing, storing, handling,
35 transferring, processing, refining, or transporting oil and
36 is located in marine waters, or is located where a
37 discharge could impact marine waters unless the facility
38 (1) is subject to Chapter 6.67 (commencing with Section
39 25270) or Chapter 6.75 (commencing with Section
40 25299.10) of Division 20 of the Health and Safety Code or

(2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a “marine facility.” For the purposes of this chapter, a small craft refueling dock is not a “marine facility.”

(g) “Marine terminal” means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (l) of Section 25270.2 of the Health and Safety Code.

(h) “Marine waters” means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) “Mobile transfer unit” means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(j) “Nonpersistent oil” means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that evaporates relatively quickly. Specifically, it is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(k) “Oil” means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(l) “Oil spill cleanup agent” means a chemical, or any other substance, used for removing, dispersing, or

1 otherwise cleaning up oil or any residual products of
2 petroleum in, or on, any of the waters of the state.

3 (m) “Onshore facility” means any facility of any kind
4 that is located entirely on lands not covered by marine
5 waters.

6 (n) (1) “Owner” or “operator” means any of the
7 following:

8 (A) In the case of a vessel, any person who owns, has
9 an ownership interest in, operates, charters by demise, or
10 leases, the vessel.

11 (B) In the case of a marine facility, any person who
12 owns, has an ownership interest in, or operates the
13 marine facility.

14 (C) Except as provided in subparagraph (D), in the
15 case of any vessel or marine facility, title or control of
16 which was conveyed due to bankruptcy, foreclosure, tax
17 delinquency, abandonment, or similar means to an entity
18 of state or local government, any person who owned, held
19 an ownership interest in, operated, or otherwise
20 controlled activities concerning the vessel or facility
21 immediately beforehand.

22 (D) An entity of the state or local government that
23 acquired ownership or control of a vessel or marine
24 facility, when the entity of the state or local government
25 has caused or contributed to a spill or discharge of oil into
26 marine waters.

27 (2) “Owner” or “operator” does not include a person
28 who, without participating in the management of a vessel
29 or marine facility, holds indicia of ownership primarily to
30 protect the person’s security interest in the vessel or
31 marine facility.

32 (3) “Operator” does not include any person who owns
33 the land underlying a marine facility or the facility itself
34 if the person is not involved in the operations of the
35 facility.

36 (o) “Person” means any individual, trust, firm, joint
37 stock company, or corporation, including, but not limited
38 to, a government corporation, partnership, and
39 association. “Person” also includes any city, county, city
40 and county, district, and the state or any department or

1 agency thereof, and the federal government, or any
2 department or agency thereof, to the extent permitted by
3 law. For the purposes of spills or discharges of oil or
4 petroleum products into the waters of the state, other
5 than marine waters, “person” is limited to an owner or
6 operator of any of the following:

7 (1) A pipeline under the jurisdiction of the Office of
8 the State Fire Marshal, as described in Chapter 5.5
9 (commencing with Section 51010) of Division 1 of Title
10 5, or the United States Department of Transportation.

11 (2) Oil field production facilities, whether active,
12 inactive, or abandoned, and the gathering lines,
13 pipelines, and flow lines associated therewith, under the
14 jurisdiction of the Division of Oil, Gas, and Geothermal
15 Resources of the Department of Conservation.

16 (3) A railroad.

17 (4) A refinery.

18 (5) A vessel to be used, or designed to be used, for the
19 commercial transport of oil or petroleum products.

20 (p) “Pipeline” means any pipeline used at any time to
21 transport oil.

22 (q) “Responsible party” or “party responsible” means
23 any of the following:

24 (1) The owner or transporter of oil or a person or
25 entity accepting responsibility for the oil.

26 (2) The owner, operator, or lessee of, or person who
27 chartered by demise, any vessel or marine facility, or a
28 person or entity accepting responsibility for the vessel or
29 marine facility.

30 (r) “Small craft” means waterborne craft, other than
31 a tanker or barge, that is less than 20 meters in length.

32 (s) “Small craft refueling dock” means a waterside
33 operation that dispenses only nonpersistent oil in bulk
34 and small amounts of persistent lubrication oil in
35 containers primarily to small craft and meets both of the
36 following criteria:

37 (1) Has tank storage capacity not exceeding 20,000
38 gallons in any single storage tank or tank compartment.

39 (2) Has a total usable tank storage capacity not
40 exceeding 75,000 gallons.

(t) “Small marine fueling facility” means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, and may dispense small amounts of persistent oil, primarily to small craft, and meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(u) “Spill” or “discharge” means any release of at least one barrel (42 gallons) of oil into marine waters or into waters of the state other than marine waters that is not authorized by any federal, state, or local government entity.

(v) “State Interagency Oil Spill Committee” means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(w) “State oil spill contingency plan” means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(x) “Tanker” means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(y) “Vessel” means a barge, as defined in subdivision (b), or a tanker, as defined in subdivision (x).

(z) “Vessel carrying oil as secondary cargo” means a tanker or barge that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

(aa) “Waters of the state” means any water, surface or underground, including saline waters, within the boundaries of the state.

SEC. 4. *Section 8670.5 of the Government Code is amended to read:*

1 8670.5. The Governor shall ensure that the state fully
2 and adequately responds to all oil spills in ~~marine~~ waters
3 *of the state*. The administrator, acting at the direction of
4 the Governor, shall implement activities relating to oil
5 spill response, including emergency drills and
6 preparedness and oil spill containment and cleanup. The
7 administrator shall also represent the state in any
8 coordinated response efforts with the federal
9 government.

10 *SEC. 5. Section 8670.7 of the Government Code is*
11 *amended to read:*

12 8670.7. (a) The administrator, subject to the
13 Governor, has the primary authority to direct prevention,
14 removal, abatement, response, containment, and cleanup
15 efforts with regard to all aspects of any oil spill in the
16 ~~marine~~ waters of the state, in accordance with any
17 applicable—~~marine~~ facility or vessel contingency plan and
18 the state oil spill contingency plan. The administrator
19 shall cooperate with any federal on-scene coordinator, as
20 specified in the National Contingency Plan.

21 (b) The administrator shall implement the state oil
22 spill contingency plan, required pursuant to Section
23 8574.1, to the fullest extent possible.

24 (c) The administrator shall do both of the following:

25 (1) Be present at the location of any oil spill of more
26 than 100,000 gallons in ~~marine~~ waters *of the state*, as soon
27 as possible after notice of the discharge.

28 (2) Ensure that persons trained in oil spill response
29 and cleanup, whether employed by the responsible party,
30 the state, or another private or public person or entity, are
31 onsite to respond to, contain, and clean up any oil spill in
32 ~~marine~~ waters *of the state*, as soon as possible after notice
33 of the discharge.

34 (d) Throughout the response and cleanup process, the
35 administrator shall apprise the members of the State
36 Interagency Oil Spill Committee, the air quality
37 management district or air pollution control district
38 having jurisdiction over the area in which the oil spill
39 occurred, and the local government entities that are
40 affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the federal on-scene coordinator, shall determine the cause and amount of the discharge.

(f) The administrator shall have the state authority over the use of all response methods, including, but not limited to, in situ burning, dispersants, and any oil spill cleanup agents in connection with an oil discharge. The administrator shall consult with the federal on-scene coordinator prior to exercising authority under this subdivision.

(g) (1) The administrator shall conduct workshops, consistent with the intent of this chapter, with the participation of appropriate local, state, and federal agencies, including the State Air Resources Board, air pollution control districts, and air quality management districts, and affected private organizations, on the subject of oil spill response technologies, including in situ burning. The workshops shall review the latest research and findings regarding the efficacy and toxicity of oil spill cleanup agents and other technologies, their potential public health and safety and environmental impacts, and any other relevant factors concerning their use in oil spill response. In conducting these workshops, the administrator shall solicit the views of all participating parties concerning the use of these technologies, with particular attention to any special considerations that apply to coastal areas and marine waters of the state.

(2) Within 90 days following the conclusion of the workshops, or by June 30, 1996, whichever occurs first, the administrator shall publish decision guidelines on the policies, procedures, and parameters for the use of in situ burning, which may be implemented in the event of an oil spill. The administrator shall, by whichever of those dates occurs first, additionally publish a schedule for future workshops to be held to develop guidelines for the use of other identified technologies.

(h) (1) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and

1 funding necessary and appropriate for the assessment of
2 damages to natural resources and for the collection of
3 data and other evidence that may help in determining
4 and recovering damages.

5 (2) (A) The administrator shall coordinate all actions
6 required by state or local agencies to assess injury to, and
7 provide full mitigation for injury to, or to restore,
8 rehabilitate, or replace, natural resources, including
9 wildlife, fisheries, wildlife or fisheries habitat, and
10 beaches and other coastal areas, that are damaged by an
11 oil spill. For purposes of this subparagraph, “actions
12 required by state or local agencies” include, but are not
13 limited to, actions required by state trustees under
14 Section 1006 of the Oil Pollution Act of 1990 (33 U.S.C.
15 Sec. 2706) and actions required pursuant to Section
16 8670.61.5.

17 (B) The responsible party shall be liable for all
18 coordination costs incurred by the administrator.

19 (3) Nothing in this subdivision shall be construed to
20 give the administrator any authority to administer state
21 or local laws or to limit the authority of another state or
22 local agency to implement and enforce state or local laws
23 under its jurisdiction, nor does this subdivision limit the
24 authority or duties of the administrator under this
25 chapter or limit the authority of an agency to enforce
26 existing permits or permit conditions.

27 (i) (1) The administrator shall enter into a
28 memorandum of understanding with the executive
29 director of the State Water Resources Control Board,
30 acting for the State Water Resources Control Board and
31 the California regional water quality control boards, and
32 with the approval of the State Water Resources Control
33 Board, to address discharges, other than dispersants, that
34 are incidental to, or directly associated with, the response,
35 containment, and cleanup of an existing or threatened oil
36 spill conducted pursuant to this chapter.

37 (2) The memorandum of understanding entered into
38 pursuant to paragraph (1) shall address any permits,
39 requirements, or authorizations that are required for the
40 specified discharges. The memorandum of

1 understanding shall be consistent with requirements that
2 protect state water quality and beneficial uses and with
3 any applicable provisions of the Porter-Cologne Water
4 Quality Control Act (Division 7 (commencing with
5 Section 13000), Water Code) or the federal Clean Water
6 Act (33 U.S.C. Sec. 1251 et seq.), and shall expedite
7 efficient oil spill response.

8 (3) The memorandum of understanding shall be
9 completed by May 15, 1994.

10 *SEC. 6. Section 8670.12 of the Government Code is*
11 *amended to read:*

12 8670.12. (a) The administrator shall conduct studies
13 and evaluations necessary for improving oil spill response,
14 containment, and cleanup and oil spill wildlife
15 rehabilitation in ~~marine~~ waters of the state and ~~marine~~ oil
16 transportation systems. The administrator may expend
17 moneys from the Oil Spill Prevention and Administration
18 Fund created pursuant to Section 8670.38, enter into
19 consultation agreements, and acquire necessary
20 equipment and services for the purpose of carrying out
21 these studies and evaluations.

22 (b) The administrator shall study the use and effects of
23 dispersants, incineration, bioremediation, and any other
24 methods used to respond to a spill. The study shall
25 periodically be updated to ensure the best achievable
26 protection from the use of those methods. Based upon
27 substantial evidence in the record, the administrator may
28 determine in individual cases that best achievable
29 protection is provided by establishing requirements
30 which provide the greatest degree of protection
31 achievable without imposing costs which significantly
32 outweigh the incremental protection that would
33 otherwise be provided. The studies shall do all of the
34 following:

35 (1) Evaluate the effectiveness of dispersants and other
36 chemical agents in oil spill response under varying
37 environmental conditions.

38 (2) Evaluate potential adverse impacts on the
39 environment and public health including, but not limited
40 to, adverse toxic impacts on water quality, fisheries, and

1 wildlife with consideration to bioaccumulation and
2 synergistic impacts, and the potential for human
3 exposure, including skin contact and consumption of
4 contaminated seafood.

5 (3) Recommend appropriate uses and limitations on
6 the use of dispersants and other chemical agents to ensure
7 they are used only in situations where the administrator
8 determines they are effective and safe.

9 (c) The administrator shall evaluate the feasibility of
10 using commercial fishermen and other mariners for oil
11 spill containment and cleanup. The study shall examine
12 the following:

13 (1) Equipment and technology needs.

14 (2) Coordination with private response personnel.

15 (3) Liability and insurance.

16 (4) Compensation.

17 (d) The studies shall be performed in conjunction with
18 any studies performed by federal, state, and international
19 entities. The administrator may enter into contracts for
20 the studies.

21 *SEC. 7. Section 8670.25 of the Government Code is*
22 *amended to read:*

23 8670.25. Any person who, without regard to intent or
24 negligence, causes or permits any oil to be discharged in
25 or on the marine *or other* waters of the state shall
26 immediately contain, cleanup, and remove the oil in the
27 most effective manner which minimizes environmental
28 damage and in accordance with the applicable
29 contingency plans, unless ordered otherwise by the Coast
30 Guard, *the Environmental Protection Agency*, or the
31 administrator.

32 *SEC. 8. Section 8670.25.5 of the Government Code is*
33 *amended to read:*

34 8670.25.5. (a) Without regard to intent or
35 negligence, any party responsible for the discharge or
36 threatened discharge of oil in marine *or other* waters of
37 *the state* shall report the discharge to the Office of
38 Emergency Services pursuant to Section 25507 of the
39 Health and Safety Code.

1 (b) Immediately upon receiving notification pursuant
2 to subdivision (a), the Office of Emergency Services shall
3 notify the administrator, the State Lands Commission,
4 the California Coastal Commission, the regional water
5 quality control board having jurisdiction over the location
6 of the discharged oil, and as provided in subdivision (d)
7 of Section 8589.7. If the spill has occurred within the
8 jurisdiction of the San Francisco Bay Conservation and
9 Development Commission, the Office of Emergency
10 Services shall notify that commission. Each public agency
11 specified in this subdivision shall adopt an internal
12 protocol over communications regarding the discharge of
13 oil and file the internal protocol with the Office of
14 Emergency Services.

15 (c) The 24-hour emergency telephone number of the
16 Office of Emergency Services shall be posted at every
17 terminal, at the area of control of every marine facility,
18 and on the bridge of every tanker in ~~marine~~ waters of the
19 state.

20 (d) This section does not apply to discharges, or
21 potential discharges, of less than one barrel (42 gallons)
22 of oil unless a more restrictive reporting standard is
23 adopted in the state oil spill contingency plan prepared
24 pursuant to Section 8574.1.

25 (e) Except as otherwise provided in this section and
26 Section 8589.7, a notification made pursuant to this
27 section shall satisfy any immediate notification
28 requirement contained in any permit issued by a
29 permitting agency.

30 *SEC. 9. Section 8670.31 of the Government Code is*
31 *amended to read:*

32 8670.31. (a) (1) In accordance with the rules,
33 regulations, and policies established by the administrator
34 pursuant to Section 8670.28, each operator of ~~a vessel or~~
35 ~~a marine facility~~ *either or both of the following* shall
36 prepare and implement an oil spill contingency plan
37 applicable to the vessel ~~or~~ marine facility: ~~Blanket,~~
38 *pipeline, facility, railroad, or refinery:*

39 (A) *A vessel or a marine facility.*

1 (B) A pipeline, facility, railroad, refinery, or vessel
2 listed in any of paragraphs (1) to (5), inclusive, of Section
3 8670.3.

4 (2) Blanket contingency plans for ~~similar~~ vessels and
5 marine facilities *similar to those described in*
6 *subparagraph (A) of paragraph (1)* may be used for ~~this~~
7 ~~purpose~~ *the purposes of this subdivision.*

8 (b) Each contingency plan required under this section
9 shall be submitted to the administrator within 90 days
10 after the effective date of the rules, regulations, and
11 policies required under Section 8670.28.

12 (c) The administrator shall review each submitted
13 contingency plan to determine whether it complies with
14 the administrator's rules, policies, and regulations.

15 (d) Each contingency plan submitted shall be
16 approved or disapproved within 180 days after receipt by
17 the administrator. The administrator may approve or
18 disapprove portions of a plan. A plan is not deemed
19 approved until all portions are approved pursuant to this
20 section. The disapproved portion shall be subject to the
21 procedures contained in subdivision (e).

22 (e) If the administrator finds the submitted
23 contingency plan is inadequate under the rules, policies,
24 and regulations of the administrator, the plan shall be
25 returned to the submitter with written reasons why the
26 plan was found inadequate and, if practicable, suggested
27 modifications or alternatives, if appropriate. The
28 submitter shall submit a new or modified plan within 90
29 days after the earlier plan was returned, responding to
30 the findings and incorporating any suggested
31 modifications. ~~Such a~~ *The* resubmittal shall be treated as
32 a new submittal and processed according to the
33 provisions of this section, except that the resubmitted
34 plan shall be deemed approved unless the administrator
35 acts pursuant to subdivision (d). Failure to gain approval
36 after the second submission may be determined by the
37 administrator to be a violation of this chapter.

38 (f) Prior to considering a contingency plan for
39 approval, the administrator may make an onsite

1 inspection and require a drill of any contingency plan that
2 is submitted.

3 (g) After the plan has been approved, it shall be
4 resubmitted on April 1, 1996, and on April 1, 1998, and
5 every five years thereafter. The administrator may
6 require earlier or more frequent resubmission, if
7 warranted. Circumstances that would require an earlier
8 resubmission include, but are not limited to, changes in
9 regulations, new oil spill response technologies,
10 deficiencies identified in the evaluation conducted
11 pursuant to Section 8670.19, or a need for a different oil
12 spill response because of increased need to protect
13 endangered species habitat. The administrator may deny
14 approval of the resubmitted plan if it is no longer
15 considered adequate according to the adopted rules,
16 regulations, and policies of the administrator at the time
17 of resubmission.

18 (h) (1) Each operator of a vessel or marine facility
19 who is required to file an oil spill response plan or update
20 pursuant to provisions of federal law regulating marine oil
21 spill response plans shall, for informational purposes only,
22 submit a copy of that plan or update to the administrator
23 at the time that it is approved by the relevant federal
24 agency.

25 (2) A vessel or marine facility operator is not required
26 to submit a copy of the response plan or update specified
27 in paragraph (1) to the administrator if either the vessel
28 or facility is exempt from having to file a response plan
29 with the state, or if the content of the response plan
30 submitted by the operator pursuant to Section 8670.28 is
31 substantially the same as the federal response plan or
32 update.

33 *SEC. 10.* Section 8670.64 of the Government Code is
34 amended to read:

35 8670.64. (a) Any person who commits any of the
36 following acts, shall, upon conviction, be punished by
37 imprisonment in the county jail for not more than one
38 year or by imprisonment in the state prison:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a vessel is disabled within one hour of the disability and the vessel, while disabled, causes a discharge of oil which enters marine waters. For the purposes of this paragraph, “vessel” means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or into waters of the state other than marine waters, or any person who reasonably should have known that the person was engaging in or causing the discharge or spill of oil into marine waters, or into waters of the state other than marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required by Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) (1) Any person who knowingly does any of the acts specified in paragraph (2) shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars (\$2,500) or more than two hundred fifty thousand dollars (\$250,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not less than five thousand dollars (\$5,000) or more than five hundred thousand dollars (\$500,000), or by both the fine and imprisonment:

1 (2) The acts subject to this subdivision are all of the
2 following:

3 (A) Fails to notify the Office of Emergency Services in
4 violation of Section 8670.25.5.

5 (B) Continues operations for which contingency plans
6 are required without a contingency plan approved
7 pursuant to Article 5 (commencing with Section 8670.28).

8 (C) Except as provided in Section 8670.27, knowingly
9 fails to follow the material provisions of the applicable
10 contingency plans.

11 ~~SEC. 5.~~

12 *SEC. 11.* Section 8670.66 of the Government Code is
13 amended to read:

14 8670.66. (a) Any person who intentionally or
15 negligently does any of the following acts shall be subject
16 to a civil penalty of not less than twenty-five thousand
17 dollars (\$25,000) or more than five hundred thousand
18 dollars (\$500,000) for each violation, and each day or
19 partial day that a violation occurs is a separate violation:

20 (1) Except as provided in Section 8670.27, fails to
21 follow the direction or orders of the administrator in
22 connection with an oil spill.

23 (2) Fails to notify the Coast Guard that a vessel is
24 disabled within one hour of the disability and the vessel,
25 while disabled, causes a discharge of oil which enters
26 marine waters. For the purposes of this paragraph,
27 “vessel” means a vessel, as defined in Section 21 of the
28 Harbors and Navigation Code, of 300 gross registered tons
29 or more.

30 (3) Discharges or spills oil into marine waters, or into
31 waters of the state other than marine waters, unless the
32 discharge is authorized by the United States, the state, or
33 other agency with appropriate jurisdiction.

34 (4) Fails to begin cleanup, abatement, or removal of
35 spilled oil as required in Section 8670.25.

36 (b) Except as provided in subdivision (a), any person
37 who intentionally or negligently violates any provision of
38 this chapter, or Division 7.8 (commencing with Section
39 8750) of the Public Resources Code, or any permit, rule,
40 regulation, standard, or requirement issued or adopted

1 pursuant to those provisions, shall be liable for a civil
2 penalty not to exceed two hundred fifty thousand dollars
3 (\$250,000) for each violation of a separate provision, or,
4 for continuing violations, for each day that violation
5 continues.

6 (c) No person shall be liable for a civil penalty imposed
7 under this section and for a civil penalty imposed
8 pursuant to Section 8670.67 for the same act or failure to
9 act.

10 ~~SEC. 6.~~

11 *SEC. 12.* Section 8670.67 of the Government Code is
12 amended to read:

13 8670.67. (a) Any person who intentionally or
14 negligently does any of the following acts shall be subject
15 to an administrative civil penalty not to exceed one
16 hundred thousand dollars (\$100,000) for each violation as
17 imposed by the administrator pursuant to Section 8670.68,
18 and each day or partial day that a violation occurs is a
19 separate violation:

20 (1) Except as provided in Section 8670.27, fails to
21 follow the applicable contingency plans or the direction
22 or orders of the administrator in connection with an oil
23 spill.

24 (2) Fails to notify the Coast Guard that a vessel is
25 disabled within one hour of the disability and the vessel,
26 while disabled, causes a discharge of oil which enters
27 marine waters. For the purposes of this paragraph,
28 “vessel” means a vessel, as defined in Section 21 of the
29 Harbors and Navigation Code, of 300 gross registered tons
30 or more.

31 (3) Discharges or spills oil into marine waters, or into
32 waters of the state other than marine waters, unless the
33 discharge is authorized by the United States, the state, or
34 other agency with appropriate jurisdiction.

35 (4) Fails to begin cleanup, abatement, or removal of
36 spilled oil as required by Section 8670.25.

37 (b) Except as provided in subdivision (a), any person
38 who intentionally or negligently violates any provision of
39 this chapter, or Division 7.8 (commencing with Section
40 8750) of the Public Resources Code, or any permit, rule,

1 regulation, standard, cease and desist order, or
2 requirement issued or adopted pursuant to those
3 provisions, shall be liable for an administrative civil
4 penalty as imposed by the administrator pursuant to
5 Section 8670.68, not to exceed one hundred thousand
6 dollars (\$100,000) for each violation of a separate
7 provision, or, for continuing violations, for each day that
8 violation continues.

9 (c) No person shall be liable for a civil penalty imposed
10 under this section and for a civil penalty imposed
11 pursuant to Section 8670.66 for the same act or failure to
12 act.

13 ~~SEC. 7.~~

14 *SEC. 13.* Section 8670.67.3 is added to the
15 Government Code, to read:

16 8670.67.3. In determining the amount of criminal
17 penalties to impose under paragraph (3) of subdivision
18 (a) of Section 8670.64 and the amount of civil penalties to
19 impose under paragraph (3) of subdivision (a) of Section
20 8670.66 or paragraph (3) of subdivision (a) of Section
21 8670.67 for causing the discharge or spill of oil into waters
22 of the state other than marine waters, the court or
23 administrative body, as the case may be, shall consider the
24 amount of oil that has entered the nonmarine waters of
25 the state, any efforts made by the defendant to mitigate
26 the effects of the discharge or spill, and the ability of the
27 defendant to pay the penalty.

28 ~~SEC. 8.~~

29 *SEC. 14.* Section 8670.70 of the Government Code is
30 amended to read:

31 8670.70. The Environmental Enhancement Fund is
32 hereby created in the State Treasury. All penalties
33 collected under Article 9 (commencing with Section
34 8670.57) shall be deposited in the Environmental
35 Enhancement Fund, except as specified in Sections
36 8670.64 and 8670.75. The money in the fund shall only be
37 used for environmental enhancement projects and shall
38 not be used for the cleanup of an oil spill or the restoration
39 required after an oil spill. The money in the fund shall be
40 available to the administrator for environmental

enhancement projects, upon appropriation therefor by the Legislature.

~~SEC. 9.~~

SEC. 15. Section 8670.75 is added to the Government Code, to read:

8670.75. All penalties collected under Article 9 (commencing with Section 8670.57) that are derived from spills or discharges into the waters of the state other than marine waters shall be deposited in the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund and expended in accordance with Section 12017 of the Fish and Game Code.

~~SEC. 10.—~~

SEC. 16. *Section 8750 of the Public Resources Code is amended to read:*

8750. Unless the context requires otherwise, the following definitions govern the construction of this division:

(a) “Administrator” means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4 of the Government Code.

(b) “Barges” means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(c) (1) “Best achievable protection” means the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator’s determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (A) the protection provided by the measures, (B) the technological achievability of the measures, and (C) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the

1 intent of the Legislature that the administrator give
2 reasonable consideration to the protection provided by
3 the measures, the technological achievability of the
4 measures, and the cost of the measures when establishing
5 the requirements to provide the best achievable
6 protection for coastal and marine resources.

7 (d) “Best achievable technology” means that
8 technology which provides the greatest degree of
9 protection taking into consideration (1) processes which
10 are being developed, or could feasibly be developed
11 anywhere in the world, given overall reasonable
12 expenditures on research and development, and (2)
13 processes which are currently in use anywhere in the
14 world. In determining what is best achievable
15 technology, the administrator shall consider the
16 effectiveness and engineering feasibility of the
17 technology.

18 (e) (1) “Commission” means the State Lands
19 Commission.

20 (2) “*Executive officer*” means the executive officer of
21 the State Lands Commission.

22 (f) “Local government” means any chartered or
23 general law city, chartered or general law county or any
24 city and county.

25 (g) “Marine facility” means any facility of any kind,
26 other than a vessel, which is or was used for the purposes
27 of exploring for, drilling for, producing, storing, handling,
28 transferring, processing, refining, or transporting oil and
29 is located in marine waters, or is located where a
30 discharge could impact marine waters unless the facility
31 (1) is subject to Chapter 6.67 (commencing with Section
32 25270) or Chapter 6.75 (commencing with Section
33 25299.10) of Division 20 of the Health and Safety Code or
34 (2) is placed on a farm, nursery, logging site, or
35 construction site and does not exceed 20,000 gallons in a
36 single storage tank. For the purposes of this division, a
37 drill ship, semisubmersible drilling platform, jack-up type
38 drilling rig, or any other floating or temporary drilling
39 platform is a “marine facility.” For the purposes of this

1 division, a small craft refueling dock is not a “marine
2 facility.”

3 (h) “Marine terminal” means any marine facility used
4 for transferring oil to or from tankers or barges. For the
5 purposes of this section, a marine terminal includes all
6 piping not integrally connected to a tank facility as
7 defined in subdivision (k) of Section 25270.2 of the Health
8 and Safety Code.

9 (i) “Marine waters” means those waters subject to
10 tidal influence, except for waters in the Sacramento-San
11 Joaquin Rivers and Delta upstream from a line running
12 north and south through the point where Contra Costa,
13 Sacramento, and Solano Counties meet.

14 (j) “Nonpersistent oil” means a petroleum-based oil,
15 such as gasoline, diesel, or jet fuel, which evaporated
16 relatively quickly. Specifically, it is an oil with
17 hydrocarbon fractions, at least 50 percent of which, by
18 volume, distills at a temperature of 645 degrees
19 Fahrenheit, and at least 95 percent of which, by volume,
20 distills at a temperature of 700 degrees Fahrenheit.

21 (k) “Oil” means any kind of petroleum, liquid
22 hydrocarbons, or petroleum products or any fraction or
23 residues therefrom, including, but not limited to, crude
24 oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil
25 sludge, oil refuse, oil mixed with waste, and liquid
26 distillates from unprocessed natural gas.

27 (l) “Onshore facility” means any facility of any kind
28 ~~which~~ *that* is located entirely on lands not covered by
29 marine waters.

30 (m) “Operator” when used in connection with vessels,
31 marine terminals, pipelines, or facilities, means any
32 person or entity ~~which~~ *that* owns, has an ownership
33 interest in, charters, leases, rents, operates, participates in
34 the operation of or uses that vessel, terminal, pipeline, or
35 facility. “Operator” does not include any entity ~~which~~
36 *that* owns the land underlying the facility or the facility
37 itself, where the entity is not involved in the operations
38 of the facility.

39 (n) “Person” means an individual, trust, firm, joint
40 stock company, or corporation, including, but not limited

1 to, a government corporation, partnership, limited
2 liability company, and association. “Person” also includes
3 any city, county, city and county, district, and the state or
4 any department or agency thereof, and the federal
5 government, or any department or agency thereof, to the
6 extent permitted by law.

7 (o) “Pipeline” means any pipeline used at any time to
8 transport oil.

9 (p) “Responsible party” or “party responsible” means
10 either of the following:

11 (1) The owner or transporter of oil or a person or
12 entity accepting responsibility for the oil.

13 (2) The owner, operator, or lessee of, or person who
14 chartered by demise, any vessel or marine facility or a
15 person or entity accepting responsibility for the vessel or
16 marine facility.

17 (q) “Small craft refueling dock” means a fixed facility
18 having tank storage capacity not exceeding 20,000 gallons
19 in any single storage tank and that dispenses
20 nonpersistent oil to small craft.

21 (r) “Spill” or “discharge” means any release of at least
22 one barrel (42 gallons) of oil not authorized by any
23 federal, state, or local government entity.

24 (s) “State oil spill contingency plan” means the state
25 oil spill contingency plan prepared pursuant to Article 3.5
26 (commencing with Section 8574.1) of Chapter 7 of
27 Division 1 of Title 2 of the Government Code.

28 (t) “Tanker” means any self-propelled, waterborne
29 vessel, constructed or adapted for the carriage of oil in
30 bulk or in commercial quantities as cargo.

31 (u) “Vessel” means a tanker or barge as defined in this
32 section.

33 *SEC. 17. Section 8754 of the Public Resources Code is*
34 *amended to read:*

35 8754. (a) The ~~administrator~~ *executive officer* may
36 prohibit an owner or operator of a marine terminal from
37 delivering or accepting oil to or from any tanker or barge
38 if the ~~administrator~~ *executive officer* finds, after noticed
39 hearing, that the owner or operator has violated this
40 chapter and that previous convictions, judgments, or

1 settlements for those violations occurred during the prior
2 three years and meet all of the following criteria:

3 (1) The violations have not been corrected or
4 reasonable progress toward correction has not been
5 achieved.

6 (2) The violations demonstrate a recurring pattern of
7 noncompliance.

8 (3) The violations pose, or have posed, a significant
9 risk to public health and safety or to the environment.

10 (b) The ~~administrator~~ *executive officer* shall not order
11 the termination of operations pursuant to subdivision (a)
12 if the decision to deny is based, in whole or in part, on
13 violations that were resolved through a settlement, unless
14 the ~~administrator~~ *executive officer* presents substantial
15 evidence proving that the violations did occur and the
16 applicant is then given the opportunity to rebut the
17 evidence of the ~~administrator~~ *executive officer*.

18 (c) The ~~administrator~~ *executive officer* may allow
19 terminals to resume transfers to and from the tankers or
20 barges described if, after noticed hearing, the
21 ~~administrator~~ *executive officer* is satisfied that the owner
22 or operator has corrected all violations and will comply
23 with all of the provisions of this division.

24 *SEC. 18.* The changes in the
25 Lempert-Keene-Seastrand Oil Spill Prevention and
26 Response Act, Chapter 7.4 (commencing with Section
27 8670.1) of Division 1 of Title 2 of the Government Code,
28 by this act shall apply to violations of Sections 8670.64,
29 8670.66, and 8670.67 of the Government Code that occur
30 on or after January 1, 2000.

31 ~~SEC. 11.~~

32 *SEC. 19.* No reimbursement is required by this act
33 pursuant to Section 6 of Article XIII B of the California
34 Constitution because the only costs that may be incurred
35 by a local agency or school district will be incurred
36 because this act creates a new crime or infraction,
37 eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition

- 1 of a crime within the meaning of Section 6 of Article
- 2 XIII B of the California Constitution.

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